

Wilmington, Delaware  
December 6, 2012

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the Council authorizes and approves that certain Infrastructure Contribution Agreement between the City of Wilmington and E. I. DuPont de Nemours and Company, a copy of which is attached hereto as Exhibit "A" and made a part hereof, for the purpose of providing up to \$300,000 to E. I. DuPont de Nemours and Company for the installation of a water line that will connect the Kennett and Alapocas portions of the City's water system.

**BE IT FURTHER RESOLVED** that Council authorizes the Commissioner of the Department of Public Works to execute the Infrastructure Contribution Agreement and any other documents that are necessary to effectuate the intent of such agreement and to accept the dedication of the water system improvements installed pursuant to such agreement.

Passed by City Council,  
December 6, 2012

ATTEST: Maribel Seijo  
City Clerk

Approved as to form this 5<sup>th</sup>  
day of December, 2012.

Phil Zsage  
Senior Assistant City Solicitor

**SYNOPSIS:** This Resolution approves the Infrastructure Contribution Agreement between the City of Wilmington and E. I. DuPont de Nemours and Company. The agreement provides \$300,000 in support to E. I. DuPont de Nemours and Company for the installation of a secondary water line serving the DuPont Experimental Station that will link the Kennett and Alapocas portions of the City's water system.

#3764

Sponsor:

Council  
Member  
Ignudo

## **INFRASTRUCTURE CONTRIBUTION AGREEMENT**

(Secondary Water Supply for DuPont Experimental Station)

**THIS INFRASTRUCTURE CONTRIBUTION AGREEMENT** (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), between the **City of Wilmington**, a Delaware municipal corporation ("City") and **E. I. DuPont de Nemours and Company**, a Delaware corporation ("DuPont").

WHEREAS, DuPont is seeking to install a secondary water supply for the DuPont Experimental Station located at 200 Powder Mill Road, Wilmington, DE 19881 (the "Experimental Station"); and

WHEREAS, the parties initially explored the possibility of installing a secondary water main from Rockford Tower pursuant to an agreement dated October 20, 2010 (the "Rockford Tower Agreement"); and

WHEREAS, pursuant to that certain Termination of DuPont Experimental Station Rockford Tower Secondary Water Supply Agreement dated July 19, 2012, the parties elected to terminate the Rockford Tower Agreement, and the City agreed to not seek reimbursement for \$80,874 of costs that were the responsibility of DuPont; and

WHEREAS, the parties have determined that it would be best to install a connecting water main that links the Kennett and Alapocas portions of the City's water system; and

WHEREAS, in conjunction with the installation of a natural gas line serving the Experimental Station by Delmarva, DuPont has agreed to install and construct a 12-inch water main, which is more particularly described on Exhibit "A" attached hereto (collectively, the "Secondary Water Line"); and

WHEREAS, the City has offered, and DuPont has agreed to accept, \$300,000 from the City in support of the installation of the Secondary Water Line by DuPont; and

NOW, THEREFORE, in consideration for the aforesaid premises, and further consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Construction.

1.1 The Secondary Water Line shall be a 12-inch HDPE main that shall be built in accordance with the plans listed on Exhibit "A" attached hereto. There shall be no modifications in the design, construction methods or materials comprising the Secondary Water Line without the prior written consent of the City's Department of Public Works.

1.2 DuPont covenants that it shall cause the Secondary Water Line to be completed within twenty-four (24) months following the Effective Date. Upon the completion of the Secondary Water Line, DuPont will notify the City's Department of Public Works and schedule an inspection of the Secondary Water Line.

1.3 City, and any of its agents or representatives, shall have the right to inspect and verify any work associated with the Secondary Water Line.

1.4 DuPont shall provide the City's Department of Public Works with access to the site so that it may test and verify that the Secondary Water Line meets or exceeds the Department of Public Works' specifications.

1.5 Upon the installation of the Secondary Water Line, DuPont shall cause the contractor to perform a leakage test to be performed under a pressure equal to twenty-five percent (25%) in excess of the average static head. Under this pressure, a maximum leakage shall not exceed, for each mile of pipe, 70 gallons per inch diameter of pipe per twenty-four (24) hours.

1.6 DuPont shall cause the contractor installing the Secondary Water Line to deliver to the City a warranty that shall guarantee the Secondary Water Line against any defects in workmanship and materials for a period of two (2) years from the date of completion and acceptance by the City of Wilmington Department of Public Works.

2. Dedication Upon Completion. Upon completion of the Secondary Water Line, DuPont shall seek to dedicate and convey legal title to the Secondary Water Line to the City at no cost or expense to the City. DuPont hereby agrees to fully cooperate in such dedication and conveyance and to execute any documents, including but not limited to, easement agreements, which are necessary for the dedication, conveyance, repair or replacement of the Secondary Water Line. In connection with any dedication, DuPont shall (a) provide City with documentation and test results for the Secondary Water Line that verify that the Secondary Water Line meets or exceeds the City of Wilmington Department of Public Works' specifications, including but not limited to, as-built drawings for the Secondary Water Line, (b) cause the City to receive a warranty that shall guarantee the Secondary Water Line against any defects in workmanship and materials for a period of two (2) years from the date of dedication and (c) indemnify, defend and hold harmless the City of Wilmington for any and all damages and injury (including death) to persons or property arising from defective construction or installation of the Secondary Water Line for a period of two (2) years from the date of dedication of the Secondary Water Line, excluding the gross negligence or willful misconduct of the City of Wilmington.

3. Easement. In connection with the dedication of the Secondary Water Line, DuPont shall execute and deliver an easement agreement, which shall be in the form attached hereto as Exhibit "B", that grants the City: (a) a perpetual right of ingress, egress and regress into, upon and across a 20' wide portion of the Experimental Station property where the Secondary Water Line is located for the purpose of installing, maintaining, operating, repairing, replacing, extending, relocating, or removing the Secondary Water Line (the "Easement Area"), and (b) the right to go into and upon the Experimental Station property for the purpose of accessing the Easement Area.

4. Cost of Installation. DuPont shall pay all costs required for the construction and installation of the Secondary Water Line, but the City will provide \$300,000 per this Agreement.

5. City Contribution. Subject to the terms and conditions of this Agreement, City hereby agrees to provide DuPont with funding in the amount of Three Hundred Thousand Dollars (\$300,000) (the "City Funds") upon the dedication and acceptance of the Secondary Water Line.

6. Additional Representations, Warranties, Covenants and Agreements. DuPont represents, warrants, covenants and agrees, knowing that City will rely on the representations, warranties, covenants and agreements, as incentives to make the City Funds, as follows:

6.1 Organization and Good Standing. DuPont (a) is duly organized, validly existing and in good standing under the laws of the State of Delaware; and (b) has the power and authority to carry on its business as now conducted.

6.2 Power and Authority; Validity of Agreement. DuPont has the power and authority to enter into and perform under this Agreement; and all actions necessary or appropriate for DuPont's execution and performance of the Agreement have been taken, and, upon its execution, the same will constitute the legal, valid and binding obligation of DuPont to the extent it is a party thereto, enforceable in accordance with their respective terms.

6.3 No Violation of Laws or Agreements. The making and performance of the Agreement by DuPont will not violate any provisions of any law or regulation, or result in any breach or violation of, or constitute a default under, any agreement or instrument by which DuPont or its property may be bound.

6.4 Costs and Expenses. DuPont shall pay or reimburse City for all reasonable out-of-pocket costs and expenses (including but not limited to attorneys' fees and disbursements) City may pay or incur in connection with any waiver, consent or amendment to this Agreement and all other documentation related thereto, the making of the City Funds hereunder and the enforcement of the same. All obligations provided for in this Section 6.4 shall survive any termination of this Agreement.

6.5 Compliance with Law; Notification. DuPont shall comply with all applicable local, state and federal laws and regulations, including without limitation environmental laws and regulations, and the provisions and requirements of all franchises, permits, certificates of compliance and approvals issued by regulatory authorities.

6.6 Other Information. DuPont shall provide City with any other documents and information, financial or otherwise, reasonably requested by City, including but not limited to, cost certifications and release of mechanic's liens for the Secondary Water Line.

7. No Guarantee of Water Pressure or Volume. DuPont agrees and acknowledges that the City does not guarantee pressure of water or volume of water.

8. Rights and Remedies of City. If DuPont shall default in the performance of any agreement or covenant contained in this Agreement and such default shall continue uncured for thirty (30) days, or such longer period that shall not exceed one hundred twenty days if the default cannot be cured within thirty (30) days and DuPont notifies the City and diligently seeks to cure such default, after the earlier to occur of (i) knowledge of such default by DuPont or (ii)

notice thereof to DuPont by City (an "Event of Default"), then, at the election of City, City shall have all rights and remedies available at law or in equity, including but not limited to, the right to seek the repayment of the City Funds or require specific performance of this Agreement, all of which shall be cumulative in nature.

9. DuPont Termination Without Cause. DuPont has the right at any time to terminate this Agreement if it chooses and not move forward with the work without cause or penalty by sending the City written notice. Upon the termination of this Agreement pursuant to this section, the City shall be released from its obligation to provide the City Funds, and DuPont shall not be entitled to seek any form of reimbursement or contribution from the City with respect to the Secondary Water Line.

10. Miscellaneous

10.1 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed as to their validity, interpretation and effect by the laws of the State of Delaware, without regard to conflicts of law principles.

10.2 If City shall waive any power, right or remedy arising hereunder or under any applicable law, such waiver shall not be deemed to be a waiver by City of the later occurrence or recurrence of any of said events with respect to City. No delay by City in the exercise of any power, right or remedy shall, under any circumstances, constitute or be deemed to be a waiver, express or implied, of the same and no course of dealing between the parties hereto shall constitute a waiver of City's powers, rights or remedies. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10.3 Except as otherwise provided in this Agreement, no modification or amendment hereof, or waiver or consent hereunder, shall be effective unless made in a writing signed by appropriate officers of the parties hereto.

10.4 The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

10.5 Any notice, request or consent required hereunder or in connection herewith shall be deemed satisfactorily given if in writing and delivered by hand, overnight delivery courier service or mailed (registered or certified mail) to the parties at their respective addresses set forth below or such other addresses as may be given by any party to the others in writing:

if to DuPont:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

if to City:

City of Wilmington Department of Public Works  
Louis L. Redding City/Cty. Bldg., 6th Floor  
800 French Street

Wilmington, DE 19801  
Attention: Commissioner

with a copy to: City of Wilmington Law Department  
Louis L. Redding City/Cty. Bldg., 9<sup>th</sup> Floor  
800 French Street  
Wilmington, DE 19801  
Attention: City Solicitor

Any notice, request or consent shall be deemed given upon receipt by the sender thereof of confirmation of hand delivery, if delivered by hand, one (1) business day after deposit with an overnight courier service, or three (3) business days after deposit in the United States mail (registered or certified).

10.6 If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

10.7 No provision shall be construed for or against any party to this Agreement on the ground that such party drafted this Agreement.

10.8 DuPont hereby consents that any action or proceeding against it be commenced and maintained in any court within the State of Delaware or in the United States District Court for the District of Delaware by service of process on any such officer; and DuPont agrees that the courts of the State of Delaware and the United States District Court for the District of Delaware shall have jurisdiction with respect to the subject matter hereof and the person of DuPont and the collateral for the City Funds.

10.9 EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF CITY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR CITY'S ENTERING INTO THIS AGREEMENT.

10.10 DUPONT ACKNOWLEDGES THAT IT HAS HAD THE ASSISTANCE OF COUNSEL IN THE REVIEW AND EXECUTION OF THIS AGREEMENT AND, SPECIFICALLY THE WAIVER OF JURY TRIAL, AND FURTHER ACKNOWLEDGES THAT THE MEANING AND EFFECT OF THE FOREGOING WAIVER OF JURY TRIAL HAS BEEN FULLY EXPLAINED TO DUPONT BY COUNSEL.

10.11 This Agreement includes the following Exhibits:

- a. Exhibit A- List of Drawings for Secondary Water Line
- b. Exhibit B- Form of Easement Agreement

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,  
have caused this Agreement to be executed as of the day and year first set forth above.

E. I. DuPONT de NEMOURS and COMPANY

By: \_\_\_\_\_  
Name:  
Title:

Approved as to form this \_\_\_\_ day of  
\_\_\_\_\_, 2012.

CITY OF WILMINGTON

\_\_\_\_\_  
Senior Assistant City Solicitor

By: \_\_\_\_\_  
Name: Kash Srinivasan  
Title: Commissioner, Department of Public Works

## EXHIBIT "A"

### LIST OF PLANS FOR SECONDARY WATER LINE

- Meter Vault Schematic Diagram from Hatch Mott MacDonald, Rev 08 07 2012
- Preliminary Pipeline Route Alignment dated August 29, 2012 for DuPont Experimental Station (6 pages)
- Drawings prepared by Hatch Mott MacDonald
  - G-1 – Title Page
  - G-2 – General Notes/ Location Plan
  - P-1 to P-14 – Gas Pipeline Plan and Profile
  - P-15 to P-23 – Water Pipeline Plan and Profile
  - D-1 to D-5 – Construction Details



EXHIBIT "B"

EASEMENT AGREEMENT

Tax Parcel No.:

Prepared by:/Return to:

Richard L. Emge, Esquire  
City of Wilmington Law Department  
Louis L. Redding City/Cty. Bldg., 9<sup>th</sup> Floor  
800 N. French Street  
Wilmington, DE 19801

## **UTILITY EASEMENT AGREEMENT**

THIS UTILITY EASEMENT AGREEMENT (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between E. I. DuPONT de NEMOURS COMPANY ("Owner") and the CITY OF WILMINGTON, a municipal corporation of the State of Delaware ("City").

### **BACKGROUND**

WHEREAS, Owner is the owner in fee simple of that certain real property, together with the improvements erected thereon, located at \_\_\_\_\_, Wilmington, DE \_\_\_\_\_, being Tax Parcel No. \_\_\_\_\_ (the "Property"); and

WHEREAS, Owner has agreed to provide City with an easement across a portion of the Property for the installation of a new waterline as more fully set forth herein, subject to the following terms, conditions, agreements and covenants.

WITNESSETH, that for and in consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, together with other good and valuable consideration, the sufficiency of which is hereby acknowledged and the mutual covenants, promises, conditions, covenants and stipulations contained herein, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Grant of Easement. Owner does hereby give, grant, bargain, sell, and convey to the City, and its lessees, agents, contractors, successors, and assigns, a non-exclusive easement in perpetuity over, upon, under and across that \_\_\_\_\_ foot (\_\_\_\_') wide portion of the Property, which area is depicted on Exhibit "A" attached hereto and made a part hereof (the "Easement Area"), to construct, install, maintain, operate, repair, replace and remove a waterline and related facilities (collectively the "Water Facilities") on, over, under, upon, and across the Easement Area for the purpose of providing water service, together with the right to inspect, alter, improve, repair, rebuild, add to, relocate, and remove such Water Facilities and all other rights and privileges necessary or convenient for the full enjoyment or use thereof, for the purpose above described, including the reasonable right of ingress, egress and regress to and from said Easement Area over the Property. The City shall have the right to trim, cut, remove, and keep clear any and all trees, limbs, undergrowth, and other obstructions, including structures and improvements

of all kinds located within or upon the Easement Area, that may, in any way, now or hereafter, in the reasonable opinion of City, endanger or in anyway interfere with the proper construction or reconstruction, operation, safety, access or maintenance of the Water Facilities. The Owner agrees that it shall not place, construct or build any permanent structure within the Easement Area. The Easement Area is more particularly bounded and described by metes and bounds in Exhibit "B" attached hereto and made a part hereof.

2. Reservation of Rights. Subject to Section 1 of this Agreement, Owner expressly retains for itself, as well as for its successors and assigns, full rights to the use of the Easement Area for any lawful purpose that does not interfere with or impede the use and enjoyment of the easements granted to the City in this Agreement.

3. Quiet Enjoyment. Owner covenants that Owner has the right to convey said easements in this Agreement and that City shall have quiet and peaceful possession, use, and enjoyment of said easement and the rights hereby conferred, and that Owner will execute and deliver such other further assurances thereof as may be reasonably necessary consistent with the terms and conditions of this Agreement.

4. Restoration and Maintenance of Easement Area.

(a) The City shall restore the Easement Area and any areas outside the Easement Area inadvertently affected by any activities conducted by the City related to the City's use of the Easement Area to their pre-construction condition immediately following any work done by the City in the Easement Area. The obligation of the City to restore any areas disturbed outside the Easement Area shall not be construed as granting the City any rights to utilize or disturb any areas outside the Easement Area.

(b) Owner shall be solely responsible for watering, fertilizing and otherwise caring for any grass, trees or other vegetation planted in the Easement Area as part of the restoration activities required by Section 4(a) above.

5. No Third Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, this Agreement is solely for the benefit of the parties hereto, their successors and assigns, and shall not benefit any third party or create or operate to create, either expressly or impliedly any rights, title or interests hereunder in favor of any third party.

6. Successors and Assigns. It is further agreed that this Agreement and any rights and interest acquired pursuant hereto shall be covenants running with and binding upon the Property and shall be binding upon and inure to the benefit of the Owner and City and their respective heirs, personal representatives, lessees, successors, and assigns.

7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date

of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

9. Amendments. This Agreement may not be modified, changed, or supplemented, nor may any of the obligations and rights be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing and then only to the extent set forth in such instrument.

10. Severability. If any term or provision of this Agreement or application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law or in equity.

11. Headings. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part thereof.

12. Counterparts. This Agreement may be executed in one or more counterparts, and all counterpart-signed documents shall be deemed to be an original and one (1) instrument.

[signature page follows]

IN WITNESS WHEREOF, we have hereunto affixed our hands and seals  
the day and year aforesaid,

**CITY OF WILMINGTON**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_(SEAL)

Name:

Title: Commissioner of Public Works

[CORPORATE SEAL]

Approved as to form this \_\_\_\_ day of  
\_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Senior Assistant City Solicitor

State of Delaware            )  
  ) ss.  
County of New Castle        )

On this \_\_ day of \_\_\_\_\_, 20\_\_, there did appear before me, a Notary  
Public for the State and County aforesaid, \_\_\_\_\_, the Commissioner  
of Public Works of the City of Wilmington, who did execute the foregoing Utility  
Easement Agreement on behalf of the City of Wilmington.

\_\_\_\_\_  
Notary Public

[signatures continue on next page]

**E. I. DuPont de Nemours Company**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (SEAL)

Name:

Title:

[CORPORATE SEAL]

State of Delaware            )  
  ) ss.  
County of New Castle        )

On this \_\_ day of \_\_\_\_\_, 20 \_\_, there did appear before me, a Notary Public for the State and County aforesaid, \_\_\_\_\_, the \_\_\_\_\_ of the E. I. DuPont de Nemours Company, who did execute the foregoing Utility Easement Agreement on behalf of the E. I. DuPont de Nemours Company.

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

[attach copy of Easement Area drawing]

**EXHIBIT "B"**

[insert legal description of Easement Area]